

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Team # 1	CCRB Case #: 200908490	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2009 4:21 AM	Location of Incident: In front of § 87(2)(b)	Precinct: 77	18 Mo. SOL 11/30/2010	EO SOL 11/30/2010	
Date/Time CV Reported Tue, 06/02/2009 9:26 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/02/2009 9:26 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Raymond Kwong	03627	932870	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Donald Edejer	13672	941694	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Raymond Kwong	Abuse: Sgt. Raymond Kwong frisked § 87(2)(b)	§ 87(2)(b)
B. An officer	Abuse: An officer refused to provide his name and/or shield number to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

## Case Summary

On June 2, 2009, § 87(2)(b) filed the following complaint with the CCRB. On May 30, 2009, at approximately 4:21 AM, § 87(2)(b) was stopped and issued a summons § 87(2)(a) 160.50 at § 87(2)(b) in Manhattan by PO Donald Edejer and Sgt. Raymond Kwong. The following allegations resulted from this encounter:

- **Allegation A- Abuse of Authority:** Sgt. Raymond Kwong frisked § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation B- Abuse of Authority:** An officer refused to provide his name and/or shield number to § 87(2)(b) § 87(2)(b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)

This complaint was originally assigned to Investigator Esther Carpenter. On October 19, 2009, it was reassigned to the undersigned investigator upon Investigator Carpenter's departure from the agency.

## Results of Investigation

### Civilian Statement

#### Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) -old black male. § 87(2)(b)

On June 2, 2009, § 87(2)(b) provided a brief statement by phone while filing the complaint. § 87(2)(b) was interviewed at the CCRB on July 20, 2009 at 10:04 AM. On July 22, 2009, § 87(2)(b) answered follow-up questions with Investigator Carpenter. § 87(2)(g)

On May 29, 2009, at approximately 2:30 AM, § 87(2)(b) exited a cab at the corner of § 87(2)(b) and § 87(2)(b) in Brooklyn. He had just been at a bar called § 87(2)(b) in downtown Brooklyn. § 87(2)(b) stated that he was not intoxicated that night and had only drunk about two or three beers. § 87(2)(b) was wearing jeans, a pair of Skechers sneakers, a white or blue polo shirt, and a baseball cap. § 87(2)(b) stated that he was alone. § 87(2)(b) headed down § 87(2)(b) toward § 87(2)(b) to his friend's house party. As he walked halfway down the block, a marked police vehicle pulled up from behind him and stopped next to him. § 87(2)(b) stated that he just was walking when the vehicle pulled up beside him and he did not speak with anyone before he was stopped. He stated that the vehicle stopped him as he was about three doors away from the house. § 87(2)(b) did not know the address of the building. § 87(2)(b) stated that he did not stop at any time after exiting the cab and being stopped by the officers. § 87(2)(b) stated that he was on the sidewalk and there was a parked car in between him and the police vehicle. In his phone statement from June 2, 2009, § 87(2)(b)

§ 87(2)(b) stated that he was entering an “after-hours club” with three friends when he was stopped by officers who asked him for ID.

There were two officers in the vehicle. The driver was a 5’8” tall Hispanic male in his early or mid-twenties with a medium build and in uniform (identified by investigation as PO Donald Edejer) and the passenger was a 5’4”-5’5” tall Asian male with dark hair, an average build and in uniform (identified by investigation as Sgt. Raymond Kwong). Sgt. Kwong asked § 87(2)(b) to come over to the vehicle. § 87(2)(b) walked over and the two officers exited their vehicle. § 87(2)(b) and the two officers stood in the street, between the marked vehicle and the parked vehicle. Sgt. Kwong asked him for his identification. § 87(2)(b) complied and Sgt. Kwong handed it to PO Edejer. PO Edejer then entered the police vehicle to check him for warrants. Sgt. Kwong asked § 87(2)(b) where he was going and § 87(2)(b) replied that he was going to a party. Sgt. Kwong proceeded to explain to § 87(2)(b) that the neighborhood was very violent and that he shouldn’t be there. They spoke for approximately two or three minutes. § 87(2)(b) also mentioned § 87(2)(b) their conversation was very general and they did not argue at any point. § 87(2)(b) did not see either Sgt. Kwong or PO Edejer use the radio at any point.

Another marked police vehicle approached and a white officer, who remains unidentified, exited the vehicle. § 87(2)(b) stated that the white officer was about 5’4” tall, with blonde hair, a little overweight and in uniform. § 87(2)(b) did not see if there was another officer in that vehicle because he was still speaking with Sgt. Kwong, and did not even notice the white officer exit the vehicle. The second vehicle parked right behind the first police vehicle. This officer walked up to § 87(2)(b) and then behind him, and mentioned something along the lines of, “Are you drinking? Are you smoking?” and § 87(2)(b) asked, “What?” the white officer “said something about paraphernalia” and then began to search his pants pockets. This officer did not have any interaction with either Sgt. Kwong or PO Edejer. He felt around his shirt and asked § 87(2)(b) to take off his hat and searched in that. The officer then asked § 87(2)(b) to take his shoes off, which he did, and searched in his shoes and socks, and also put his hands into his underwear. The officer did not touch § 87(2)(b) groin area, but felt down through his side and his buttocks to his upper thighs. § 87(2)(b) stated that the only thing he had on him was a cell phone and he did not have anything else in his pockets that would have created any type of bulge. The officer searched him about three or four minutes. § 87(2)(b) asked the officer why he was searching him and the officer did not respond.

The white officer stopped searching him and returned to his vehicle and drove away. As he began to walk away, § 87(2)(b) asked him for his badge number and the officer continued to walk away. Sgt. Kwong continued to speak with § 87(2)(b) § 87(2)(b). PO Edejer, who had been in the police vehicle the entire time, then exited the vehicle and issued § 87(2)(b) a summons § 87(2)(a) 160.50. § 87(2)(b) asked why he was receiving a summons and he believed the officers told him at the time that it was for loitering. The two officers then returned to their vehicles and left.

### **NYPD Statements:**

#### **Subject Officer: Sgt. RAYMOND KWONG**

- *Sgt. Kwong is a § 87(2)(b)-old Asian male who is 5’6” tall and weighs 155 pounds. He has black hair and brown eyes.*
- *On May 30, 2009, Sgt. Kwong was the patrol supervisor from 11:15 PM to 7:30 AM. PO Donald Edejer was his operator. They were dressed in uniform, assigned to a marked RMP.*

### CCRB Statement

On January 29, 2010, Sgt. Raymond Kwong of the 77<sup>th</sup> Precinct was interviewed at the CCRB.

Sgt. Kwong did not have any memo book entries related to this incident.

On May 30, 2009, at approximately 4:21 AM, Sgt. Kwong was patrolling in his RMP when he observed § 87(2)(b) standing in the foyer of § 87(2)(b). § 87(2)(b) was visible through the glass door, and appeared suspicious because he was pressing multiple buzzers repeatedly. Sgt. Kwong also stated that the block of § 87(2)(b) between § 87(2)(b) and § 87(2)(b) was a high crime area, which also contributed to his suspicion. Sgt. Kwong and PO Edejer approached § 87(2)(b) and Sgt. Kwong asked him what he was doing. § 87(2)(b) replied that he was looking for his friend. Sgt. Kwong could not recall what name § 87(2)(b) provided for his friend. Sgt. Kwong stated that § 87(2)(b) reason did not seem “legitimate” because § 87(2)(b) did not know where his friend lived. PO Edejer obtained § 87(2)(b)s ID, and the officers moved with § 87(2)(b) out of the building, into the street.

PO Edejer returned to the patrol car with § 87(2)(b) ID. Sgt. Kwong frisked § 87(2)(b) by moving his hands around § 87(2)(b)s waistband. He stated that he frisked § 87(2)(b) because he appeared nervous, was fidgeting and had not provided a “legitimate” reason for being inside the building in a high crime area. Sgt. Kwong was specifically asked if there was something about § 87(2)(b) appearance which led him to believe he was carrying a weapon. He stated there was not. He was then asked why he chose to frisk § 87(2)(b) waistband area. He stated, “That’s where they usually keep their weapons.” Sgt. Kwong did not recover anything from the frisk, and a search was not conducted. PO Edejer issued § 87(2)(b) a summons for § 87(2)(a) 160.50 and § 87(2)(b) was told to leave the premises. No other officers arrived on the scene.

Sgt. Kwong stated that § 87(2)(b) is a multi-story residential building, and that there are frequent complaints by neighbors and residents that there is an illegal social club inside the building. Sgt. Kwong has personally responded to such calls in previous incidents.

### Witness Officer: PO DONALD EDEJER

- PO Edejer is a § 87(2)(b)-old Asian male, who is 5’8” tall and weighs 180 pounds. He has black hair and brown eyes.
- PO Edejer was Sgt. Kwong’s operator from 11:15 PM to 7:50 AM. He was dressed in uniform, and assigned to an RMP.

### Summons

On May 30, 2009, at 4:21 AM, PO Edejer issued § 87(2)(b) a summons § 87(2)(a) 160.50 at § 87(2)(b) in Brooklyn.

### Memo Book

PO Edejer noted in his memo book that on May 30, 2009, at 4:15 AM, § 87(2)(b) was stopped inside of § 87(2)(b) § 87(2)(a) 160.50. At 4:21 AM § 87(2)(b) was issued a summons § 87(2)(a) 160.50. At 4:22 AM, PO Edejer resumed patrol.

### CCRB Statement

On December 21, 2009, PO Donald Edejer of the 77<sup>th</sup> Precinct was interviewed at the CCRB. § 87(2)(g)

PO Edejer stated that § 87(2)(b) is a residential building, which has an illegal social club in the basement. He stated he knows this because he has responded to calls at § 87(2)(b) both prior to, and since May 30, 2009 in regards to complaints about the social club. PO Edejer observed approximately three individuals being let into the location, including § 87(2)(b). They were standing inside the vestibule of the building, in between the front door and the locked door. When the individuals walking through the door saw the police vehicle, they immediately closed the door, leaving only § 87(2)(b) standing in the vestibule. He looked as though he was confused or lost. PO Edejer and Sgt. Kwong approached § 87(2)(b) and asked him if he knew anyone who lived in the building. § 87(2)(b) stated that he didn't know anyone who lived in the building. PO Edejer also asked § 87(2)(b) if he was in possession of any weapons or contraband. PO Edejer stated that he asked this as a matter of safety, but did not seriously suspect there were any weapons in his possession, because he did not observe anything about § 87(2)(b)'s appearance or behavior which would indicate that he did. The officers then requested § 87(2)(b)'s ID, which PO Edejer took back to the patrol car to check for warrants.

PO Edejer didn't find any warrants for § 87(2)(b) and wrote a § 87(2)(a) 160.50 summons inside the patrol car. PO Edejer then returned to the front of the building where § 87(2)(b) was waiting with Sgt. Kwong. PO Edejer stated that as he wrote the summons, he could not see what occurred between Sgt. Kwong and § 87(2)(b). PO Edejer handed § 87(2)(b) the summons. PO Edejer stated that he did not frisk or search § 87(2)(b) and did not witness Sgt. Kwong frisk or search § 87(2)(b) either. No other police officers arrived at the scene.

## **NYPD Documents**

### **Roll Call**

The roll call from the 77<sup>th</sup> Precinct during tour 1 on May 30, 2009 indicated that Sgt. Kwong was assigned to the front desk, while PO Edejer was assigned as the patrol supervisor's driver.

### **SPRINT**

The sprint for this incident, indicated that at 4:26 AM on May 30, 2009, Sgt. Kwong reported a summons issued. No further radio transmissions were made. The radio code for this incident was 10-10P2, "Possible Crime-Suspicious Person."

## **Summons for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 3, 2009 with regard to the incident.

## **Civilian Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b)

## **Subject Officer CCRB History**

- Sgt. Kwong has been a member of the service for six years and there are no substantiated CCRB allegations against him.

## Conclusion

### Identification of Subject Officers

- Both Sgt. Kwong and PO Edejer admitted to approaching § 87(2)(b). Sgt. Kwong admitted that he frisked § 87(2)(b). Although § 87(2)(b) claimed to have been searched by the unidentified white male, Sgt. Kwong would have been the officer supervising this action since he is a sergeant. § 87(2)(g)
- § 87(2)(g)

### Investigative Findings and Recommendations

#### Allegation A- Abuse of Authority: Sgt. Raymond Kwong frisked § 87(2)(b)

§ 87(2)(b) claimed that the officers approached him on the street for no apparent reason as he walked to an unidentified friend's house at an unknown address. The officers claimed that they stopped § 87(2)(b) as he stood in the vestibule of § 87(2)(b) attempting to enter an unlicensed social club. § 87(2)(b), § 87(2)(g)

Sgt. Kwong admitted that he frisked around § 87(2)(b)'s waistband. According to Barry Kamins, New York Search and Seizure, NY courts have found that in order to conduct a lawful frisk, police officers must have both a reasonable suspicion that a crime has been committed and a reasonable suspicion that the suspect is armed. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) Sgt. Kwong stated that he frisked § 87(2)(b) because § 87(2)(b) was nervous, and the location was a high crime area. § 87(2)(g)

§ 87(2)(a) 160.50 is not categorized as a violent crime, and neither Sgt. Kwong nor PO Edejer stated that § 87(2)(b) was suspected of any other crime. Sgt. Kwong also denied seeing anything on § 87(2)(b) indicative of a concealed weapon, such as a bulge. When Sgt. Kwong was asked why he chose to frisk § 87(2)(b)'s waistband specifically, he stated that "That's where they usually keep their weapons." § 87(2)(b), § 87(2)(g)

#### Allegation B- Abuse of Authority: An officer refused to provide his name and/or shield number to § 87(2)(b)

§ 87(2)(b) alleged that an unidentified officer arrived after Sgt. Kwong and PO Edejer. As that officer left, § 87(2)(b) allegedly called out to the officer, asking for his shield number, and that officer allegedly ignored § 87(2)(b). The SPRINT did not identify any officers besides Sgt. Kwong and PO Edejer coming to the scene, and both officers denied that any other officers came to the scene. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

From November 2 to November 18, 2009, the undersigned made five attempts to contact § 87(2)(b) by phone to obtain his cooperation to view a photo array of potential subject officers, but he failed to return the undersigned's calls. A search of the Department of Corrections inmate locator indicated that § 87(2)(b) was not incarcerated during that time. § 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: 1

:

Investigator:	_____	<u>Simon Wang</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date